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ABSTRACT

A survey was made of graduate programs for foreign students at three law schools with different missions and characteristics. The survey focused on the following points: (1) students' backgrounds (cultural, linguistic, geographic, educational, and professional); (2) student reasons for attending a graduate law program in the United States; (3) student preconceptions and expectations about the United States in general and the law program in particular; (4) any language or cultural problems encountered by the students; and (5) the steps taken by the law schools to anticipate or remediate such problems. In each school, student perceptions of the program differed from faculty and administrator perceptions. Faculty and program directors reported no identifiable pattern of problems, but students reported experience of language-based problems. Students' perceptions of their own English skills followed no general pattern, although all of the foreign students took longer than native students to complete reading assignments. The most commonly reported problems were with speaking skills, despite program reliance on the Test of English as a Foreign Language as an indicator of skill level. All of the foreign student graduate programs are recently implemented, but all anticipate expansion. It is recommended that institutions establishing similar programs engage specialists in English as a second language for program development and/or provide for individual consultation with students. (MSE)

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ESL AND THE MCL: A STUDY OF "LANGUAGE"-BASED PROBLEMS FACED BY CANDIDATES FOR THE DEGREE OF MASTER OF COMPARATIVE LAW IN AMERICAN LAW SCHOOLS

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INTRODUCTION

While each occupation, each vocation, each profession develops its own special language, perhaps none is as language-based as the legal profession. Over the centuries, Anglo-American lawyers have developed a language of their own,[1] derived in part from Latin roots, in part from medieval "law French,"[2] and in part from decades of interpretation and reinterpretation through judicial decision. This legal "language" has its own vocabulary, its own rules of syntax, grammar, and style,[3] even its own system of citation.[4] In a sense, then, even for the Anglophone, the study of law is very much an exercise in learning a "foreign" language.

At the same time, it can be argued that the practice of law, at least in the common law world, involves essentially the manipulaion of language,[5] not only the arcane language of the professional but also the everyday language of the layperson--whether client, businessperson, or (especially) juror. Thus, the successful lawyer--and law student--must have or acquire a mastery of both the language of the law and English generally.

After a decade and a half of spectacular growth, American law schools have begun to experience a relative famine. Nationally, law school applications have declined by approximately ten percent (10%) per year for each of the last three years. While enrollments have remained reasonably constant (though perhaps with a slight decline in the overall quality of the entering class, at least at the less prestigious schools), many American law schools must now anticipate a potential budgetary "crunch" when previously made commitments to staffing and expenditures, based upon previously high enrollments, encounter a decline in the absolute population of students seeking the degree of juris doctor (J.D.).[6]

Alternatively, to compensate for the loss of J.D. students, American law schools might turn to foreign students. A few American law schools have for some time had graduate degree programs catering to foreign attorneys holding non-American law degrees who seek to acquire an American credential. At those schools which already have such graduate programs, should the numbers of traditional law students continue to decrease, pressure may mount to increase the number of foreign graduate students in order to offset lost revenues. On the other hand, those law schools which presently do not have graduate programs or graduate programs directed primarily to foreigners may, for similar reasons, initiate such programs.

In either case, the American law school--not traditionally geared to provide ESL/EFL or intercultural communication training--faces a number of substantial potential difficulties. While today the stereotypical Professor Kingsfield[7] is the exception rather than the rule in American legal education, he (and she) can still be found in the law school classroom with some considerable regularity. Moreover, even the majority of American law professors--most of whom were, quite literally, Professor Kingsfield's students--have not been trained in (nor do they purport to practice) supportive pedagogical techniques.

In such an educational setting what is to be done with the graduate law student whose native language is not English? He or she must learn the language of the (American) law while still encountering problems with the vernacular. How are such students to be chosen? How are they to be trained and evaluated by American law schools? For what are they being educated? And what language/cultural training, if any, need or should the American law school provide?

THE PRESENT STUDY

With the foregoing questions in mind, the authors undertook a study of the graudate programs for foreign students offered at three American law schools. The methodology employed was in-depth interviews with the foreign graduate law students themselves, together with interviews of faculty members and administrators at each institution. The interviews focused upon (1) the students' backgrounds (cultural, linguistic, geographical, educational, and professional), (2) the students' reasons for attending a graduate law program in the United States, (3) the students' preconceptions/expectations regarding both the United States generally and the graduate law program in particular, (4) any language/cultural problems encountered by the students (as percieved by the students themselves, on the one hand, and as perceived by the law school's faculty and administrators, on the other hand), and (5) what, if any, steps the law schools took to anticipate or to remediate such problems when and if they arose.

For purposes of comparison and contrast, three law schools were chosen for study. The first of the schools selected is a highly prestigious, nationally recognized institution which draws from a pool of excellent applicants for its regular student body of nearly one thousand (1,000) students. In 1983-1984 its entering first-year class had a median LSAT[8] score of approximately 40 and a median undergraduate grade point average (GPA) of 3.70.[9] A public, taxpayer-supported institution, this law school will, for purposes of this paper, be identified as "State Law School."

The second law school selected for study is a developing, regionally recognized school. Associated with a sectarian undergraduate college, this law school admits students with above average undergraduate records.

Identified for purposes of this paper as "Private Law School," this school has a prospective-J.D. population of nine hundred and forty-nine (949), and in 1983-1984 admitted an entering class with a median undergraduate GPA of 3.25 and a median LSAT score of 34.[10]

"Independent Law School," as it shall be known in this paper, is a law school with a juris doctor enrollment of about six hundred and seventy (670) students. Founded in 1924, it was originally associated with a private undergraduate institution. But, in 1975, it became the first American law school ever to break away from an established college or university and yet keep its American Bar Association accreditation. While certainly, thus, a competent law school, Independent Law School is, nevertheless, an institution presently at the lower end of the prestige continuum, which draws its enrollment from a pool of good but not outstanding applicants. In 1983-1984, its entering class had a median undergraduate GPA of 3.0 and a median LSAT score of 33.[11]

FINDINGS

Private Law School

While, as discussed more fully below, the programs vary in some detail(s), each of the schools surveyed has a graduate law program in which foreign attorneys pursue regular juris doctor (J.D.) course work, together with some specialized class (or classes) for the foreign graduate students only. Private Law School, for example, requires its Master of Comparative Law (MCL) students to take a three-unit Introduction to the United States Legal System. Otherwise, the students are free to take whatever courses they wish in order to complete the twenty-four units required for the degree, although the faculty director of the program does try to steer the students into one or two of the first-year courses in the J.D. program,

such as Real Property, Torts, or Contracts.[12]

At Private Law School each of the MCL students must also fulfill a scholarly writing requirement by producing a research paper in English. Normally, this is done by the student's taking an upper level seminar, but a thesis option is also provided for the more scholarly inclined.

Presently, Private Law School has twenty students enrolled in its MCL program, only one of which is a native English speaker.[13] Sixteen of the students are pursuing their studies full-time; the other four are part-time students. This student population is predominantly (2/3) drawn from European countries, with the remaining students generally coming from the Middle East or Southern Asia. There are only two Latin American students; there are none from Africa. This student-nationality mix tends to be consistent with the pattern of requests for information and admission applications which Private Law School has experienced during the seven years its MCL program has been in existence. If there has been any change over that time it has been a decline in the number of inquiries (and, thus, students) from Latin America.

This student mix is also reflective of differences in background and motivation for enrolling in the MCL degree program. The European students, the largest contingent, which itself tends to be drawn primarily from the French and from German speakers (Germans, Swiss, Austrians), overwhelmingly tend to be academically-oriented, doctoral students in their own country of origin, who intend to pursue teaching careers. The MCL year provides these students with a chance to enhance their academic credentials, while garnering the information necessary to add a "comparative law" chapter to their doctoral dissertations. Generally, the European students tend to be younger than their Latin, Arab, and Asian colleagues.

Unlike the European students at Private Law School, the students from the Middle East, Asia, and Latin American tend to have had experience in the actual practice of law. They are drawn largely, though not exclusively, from the civil service in their respective countries, and they are seeking the MCL for purposes of upward mobility in their careers.

For admission to its MCL program Private Law School employs an informal, "rule of thumb" requirement of a minimum score of 600 on the TOEFL. Indeed, the average (mean) TOEFL score of the 1984 admittees was 613. Candidates with a score of 575 or lower are placed on a waiting list and, if admitted at all, are admitted on the basis of such individualized criteria as faculty familiarity with the student's referee(s), the desire to have a graduate in that particular country or region, or some unique contribution the student might make to the school while enrolled in the MCL program. Most interestingly, the faculty director of the program, based on his experience, expressed considerable confidence in the TOEFL as a predictor of law school success for MCL students.

Once admitted, Private Law School's MCL students receive no additional English training. They are required to take the same examinations with their American law student counterparts; and, since law school examinations are graded anonymously, the professor--at least in theory--does not know if an examination paper is that of an MCL or of a J.D. student. The only concessions which Private Law School makes to the linguistic backgrounds of its MCL students is to allow them to use an English language dictionary during an examination and--subject to the approval of the individual professor in the particular course--to allow them an additional twenty minutes per hour of time in which to complete the examination. (For

example, an MCL student would be permitted four hours to complete an examination budgeted for three hours for regular J.D. students.)

Despite what may appear to some to be a rather Draconian approach to non-English speaking students--or, more likely, because of the relatively high TOEFL scores of its MCL students--, Private Law School claims to have experienced few language problems with its MCL students. According to the faculty director of Private Law School's MCL program, the problems which its students have encountered tend to be attributable to the speech patterns of certain professors. Some speak too quickly; MCL students tend to avoid these.[14] Similarly, the MCL students complain about and avoid those professors whose speech is regionally accented.[15] The director further noted that, to the extent MCL students have experienced language problems, those problems were centered in the students from non-Indo-European speaking backgrounds. Arabic speakers have encountered some difficulties, but Private Law School's experience has been that the language problems have been most acute among its Thai and Taiwanese students.

The students themselves supported the director's observations regarding professors' speech patterns. But they also reported significantly greater language problems than recognized (or acknowledged) by the faculty director. Given the Socratic method employed in most law school instruction, difficulties in speaking English are magnified. As one of the students, a Spanish-speaking woman with eleven years experience as a practicing attorney, put it, "The first time I speak up in class, the professor, he, ridiculized me." The result: she no longer volunteers to participate in class discussions.[16] The students, furthermore, believed that their speaking fluency (or the lack thereof) inhibited their ability to become better acquainted with Americans personally.

When its MCL students experience such problems, however, Private Law School's remediating response has been relatively minimal. Students experiencing difficulties are encouraged to move from full-time to part-time study and/or are referred to the undergraduate English program. The Law School itself provides no ESL training for the students, either prior to their commencing the MCL program or concurrent with their MCL course work. In fact, one MCL student, a Pakistani, himself a part-time employee in the university's language laboratory, complained that he had received no response to his repeated requests that the law school have English language video cassettes (similar to those made available to the undergraduate foreign language students) placed in the lab for use by the MCL students. Nevertheless, Private Law School reports it has never yet had an MCL student flunk out of the program (although there has been some "optional" leaving) and in the first six years of its existence (1979-1984) has produced thirty-nine graduates.

This success rate may be attributable to the extensive program of personal support Private Law School provides for its MCL students. Each student is assigned an individual faculty adviser, an individual student adviser (drawn on a voluntary basis from the ranks of the regular American law students), and an individual alumnus/alumna adviser. These advisers assist the MCL student in adapting to American culture, provide experienced advice regarding the academic transition, and generally personalize the MCL program.

The foreign students, in turn, can and do provide a resource for the law school. In class, if not inhibited from participation, they provide a comparative perspective on the issues under discussion. On an extracurricular basis, the students present a monthly lecture series, organized by themselves, on legal topics of international or transnational interest.

Still, faculty and (American) student reaction to the MCL students has been mixed. The response of those students enrolled in the regular J.D. program has ranged from indifference to virtual adoption. Most of the American students, particularly first-year students, are so overwhelmed themselves by the law school experience that they have little time or energy to devote to cultivating acquaintances with MCL students. A few second- and third-year students, particularly those who anticipate international careers, approach the MCL students, and it is from this pool that the volunteer student advisers are drawn. Many of these students perform their advising roles with enthusiasm and genuine regard for the foreign students, but their motivation remains primarily career-oriented. There appeared to be little altruism in the student advising program.

Faculty reaction has also been mixed and, in a few cases, much more hostile than student response. Some faculty believe that, by virtue of being able to use a dictionary and being given additional time on examinations, the MCL students receive an unfair advantage; a handful have even refused to allow MCL students in their classes. Even those favorably disposed to the MCL program at Private Law School concede that it is highly "labor intensive." As the faculty director of the program put it, the MCL students "take a lot of time." Each requires much more advising than does the average J.D. student, and they often need non-academic assistance, such as help with visa problems or housing discrimination (though the latter does not seem to be a problem significantly suffered by the European students, the largest group in the program).

State Law School

State Law School's experience has tended to parallel that of Private

Law School. Like Private Law School's MCL program, State Law School's Graduate Program in International and Comparative Studies has been in-place for seven years. If anything, State Law School's program is even more academically oriented than that of Private Law School.[17] Associated with a major research university whose undergraduate and graduate programs are nationally and internationally recognized, State Law School admits only six to ten students each year from an applicant pool numbering one hundred and twenty to one hundred and fifty per year. (Recently State Law School has received on average seven hundred to eight hundred inquiries and/or requests for applications each year).

Those students admitted are expected to complete a one-year, full-time in-residence program of twenty units. The twenty units include an Introduction to American Law, given during the Fall Semester, and a four-unit seminar, given during the Spring Semester for graduate students only, as a part of which the students write a substantial research thesis in English. Students are also expected to take at least one first-year J.D. course, usually Contracts or Torts.

In those courses which they take with regular American J.D. students, the foreign students are examined just as the other students; and, because the exams are graded anonymously, the professors allegedly do not know whether a particular examination has been produced by a non-native-English-speaking student. As at Private Law School, however, the foreign graduate students are permitted extra time (at professorial discretion up to one additional hour per three hours of examination time), in which to complete an exam. They are not, however, permitted to use a dictionary.

Given the highly academic nature of its program, State Law School's

foreign graduate student population tends to be not only predominantly European but also largely Germanic. If there is any trend in its enrollment, it is toward a growing presence of Swiss and Dutch. Each year a minority of Asians are enrolled, although somewhat surprisingly in view of State Law School's location on the Pacific Rim few, if any, of these have been or are Japanese. No Middle Eastern student has ever matriculated in the program; indeed, in seven years the program has enrolled but a single Muslim student, a Pakistani.

State Law School's foreign graduate students, thus, strongly tend to be European doctoral students or junior faculty at European universities, with little or no experience in the actual practice of law. Few, if any, of its students pursue its program as a means to advance their careers within the legal profession in their home countries. The students tend to concentrate heavily on international business and commerical law; and, in fact, some of the American faculty involved with the program have begun to voice concern over its narrowness of focus.

For admission, State Law School tends to insist upon TOEFL scores in excess of 600. Applicants with 560 TOEFLs or below are automatically rejected. Applicants with TOEFL scores between 600 and 560 present, as the faculty director of the program phrased it, "tricky stuff." Generally, it has been State Law School's experience that otherwise well-qualified and well-recommended European applicants whose TOEFL scores fall in this range can succeed in the program; acceptance of Asian applicants with TOEFL scores between 560 and 600, however, has been, again to quote the faculty director, "an invitation to disaster." Of course, given the particular orientation of State Law School's program, this may simply be a self-fulfilling prophecy. In any case, the

faculty director of State Law School's program was less confident in the correlation between TOEFL score and law school success than was the faculty director of Private Law School's program.

Admitted students are paired with individual faculty members who guide the student's study very much on a tutorial model. Unlike Private Law School, however, there is no "buddy" system, whereby the foreign student is assigned an American student counterpart. Apart from this individual faculty attention and the possibility of extra time to complete exminations, the foreign graduate students receive no allowance whatsoever.

The students themselves express appreciation at what they perceive to be the very personalized instruction of American law schools. They do, however, exhibit dismay at the highly compartmentalized and specialized nature of American legal practice and American legal instruction. Insofar as their language abilities were concerned and how those might interfere with their academic performance, those foreign students interviewed at State Law School were less sanguine than the faculty director of the program. As a group they indicated frustration with their ability to take what they conceived of as adequate class notes.[18]

The students also expressed disappointment at their inability to "get to know" Americans. All of the State Law School students interviewed found Americans--the general population as well as their law school colleagues--to be very helpful and friendly on a superficial level. But they agreed uniformally that establishing closer personal relationships with Americans was virtually impossible.[19]

Generally, however, it would be accurate to say that State Law School has experienced few "language"-based problems in its graduate program.

Most of its students encountering American society for the first time,[20] even those from Western Europe, do, of course, experience an initial period of "culture shock," upon arriving in the United States. But, given the very small numbers of students involved, the highly selective process by which they are admitted, the innate intelligence and academic skills of the admittees, and their high levels of English proficiency, such problems as have been encountered have been of an individual or idiosyncratic nature, rather than attributable to any linguistic, ethic or cultural patterns.

Indeed, the only generally recurring problem noted by State Law School's faculty program director was that of students taking and passing the local state bar examination, finding employment with American law firms, and remaining or attempting to remain in the United States. This is a problem, however, which seems clearly attributable to State Law School's own very high selection standards, the intellectual caliber of the foreign students admitted to its graduate program, and, thus, to those students' potential for economic success in the United States It is, however, a concern of the school, which has begun to scrutinize closely applications to attempt to identify those applicants who may be using the program as a means to get one foot inside "the golden door."[21]

Independent Law School

Independent Law School's MCL program is the smallest, the most-recently established, and interestingly enough the most cosmopolitan of the three programs. In only its second year, the program has a current enrollment of six students, two of whom are Saudis and one a Thai. Its first admittees were two Kuwaitis and another Thai.

MCL students must complete sixteen units within a residency of one

year, and the school insists that they take at least one first-year J.D. course, again usually Torts or Contracts. Each student must also complete the school's scholarly writing requirement, applicable to all J.D. students as well; but this can be satisfied by a two-unit "paper" course. There is no thesis requirement.

In addition, as part of the MCL program, the students attend a two-month summer orientation prior to the beginning of the regular academic year. Taught in English by the program's faculty director, this summer orientation introduces the students to the American judicial system, American civil and criminal procedure, and American substantive law. At a less obvious level, the summer program is also intended to improve and equalize the students' knowledge of both American legal method and American English.

Unlike either Private Law School or State Law School, the MCL students at Independent Law School, even the Europeans, are all practice-oriented. Each of them has had at least two or three years experience in practice in their respective countries, and each reported that they intended to return to practice in their countries of origin. Given this practical orientation, the students' interests and, thus, the courses which they take tend to concentrate on commercial law, particularly international taxation and international business transactions.

Of the three programs surveyed, Independent Law School's MCL program is the only one directed by a law faculty member who is himself a non-native English speaker. Ironically enough, in light of this fact, it is the program which makes the fewest concessions to potential language difficulties of its students (except, of course, for the pre-entry

orientation). Examined together with regular J.D. students, Independent Law School's MCL students are not allowed to use a dictionary in their examinations, nor are they permitted extra time in which to complete an examination.[22] The students are not assigned to individual faculty tutors, nor are they paired with American J.D. students. Indeed, the foreign-born and foreign-educated director of Independent Law School's MCL program took the position that, in accepting admission to the program and matriculating at Independent Law School, the foreign students were to be treated "like any other grown-ups" and "assumed the risk" that their knowledge of English might be inadequate.

Independent Law School's rigorous, uncompromising approach cannot be said to be warranted by the TOEFL scores of its students. Among the three programs surveyed, its students' scores were the lowest, ranging from 500 to 550.

The program director claimed that, apart from some problems in locating housing and the usual difficulties with the American immigration bureaucracy, the students had experienced few, if any, linguistic/cultural problems. The students, however, were less positive, particularly with regard to their speaking and listening abilities; and, in fact, it was the authors' own observation(s) that Independent Law School's MCL students were less prepared for oral communication in English than were the students in the other two programs surveyed.

Indeed, a majority of the MCL students at Independent Law School reported that they had applied to graduate law programs at more prestigious East Coast law schools and (at the time they were interviewed) were hoping to be accepted at those universities in order to pursue an LL.M. or a second MCL degree. This phenomenon was discovered only at Independent

Law School. Should this pattern continue, it is apparent that Independent Law School's MCL course of study would become, in effect, an orientation program for other law schools.

CONCLUSIONS

The relative infancy of the programs surveyed and the small numbers of students involved will permit of only very tentative conclusions at best. Still the authors' research suggests three: (1) The rich tend to get richer; (2) but the rich may not be as rich as they perceive themselves to be; and (3), to the extent that the dynamic in American legal education is toward an expansion of graduate programs for foreign students (and that does appear to be the dynamic), American law schools should show greater sensitivity to those students' language-based problems and needs.

In the first place, it is obvious that, if a school, such as State Law School, can draw from a relatively large pool of very qualified applicants, admitting but five percent of those applicants, most of whom are of European origin, it can insist on near-native fluency in English (at least as measured by the TOEFL). It is not surprising, therefore, that State Law School's foreign graduate students expressed the fewest difficulties in adapting to American society generally and American legal education in particular. Indeed, their greatest frustration--the difficulty in getting to know Americans on an intimate personal level--is a measure of their language proficiency. But even State Law School's foreign graduate students noted writing (note-taking) difficulties which the faculty program director did not recognize.

This, in turn, relates to the second conclusion the authors would draw on the basis of this preliminary research. At each of the law

schools surveyed, it was striking to encounter the differences in perception of the program expressed by faculty and administrators, on the one hand, and the foreign students, on the other. In every case, program directors, law school administrators, and law faculty interviewed exuded confidence in their program and reported no identifiable pattern of problems within their program. At each institution, however, the foreign students, while enthusiastic about their particular school's program, recognized having experienced language-based problems.

The students' own self-perceptions of their problems in English formed no general pattern. Among the four language skills (reading, writing, listening, and speaking) one or more students interviewed claimed to have experienced special problems with each. All of the foreign law students strongly believed that it took them significantly longer to complete reading assignments than it did their American counterparts in the classes they took with J.D. students. This problem, however, appears to the authors to be less attributable to the students' general command of English than to the specialized nature of the subject matter.

The most commonly reported problems which could be clearly attributed to the students' levels of language preparation were related to speaking skills. This seems to belie the confidence expressed by some program directors and law faculty in the TOEFL as a predictor of law school ability, since that examination does not test speaking proficiency. When such shortcomings in spoken English are combined with the often brusque and sometimes consciously intimidating ambience of the American law school classroom, the foreign student's response is often to withdraw from participation. As a result, the foreign students, however well they

may perform on examinations, are denied a benefit upon which American law schools pride themselves: participation in the intellectual give-and-take between professor and student and between student and student, the preparation of the lawyer "to think on his feet."

Perhaps the most striking aspect of the three programs surveyed, considered as a whole, is how recently they have been implemented. None is more than seven years old. Indeed, the youngest program has been implemented at the least prestigious of the three law schools studied and that hardest hit by the decline in American students' applications for J.D. programs. It is also of note that it is this program, at Independent Law School, that, while the smallest of the three, accepts the highest percentage of applicants (20%), requires the lowest TEOFL scores, and has the students who both exhibit and report the highest incidence of langauge problems.

Each faculty program director interviewed, however, stated that there was an interest on the part of the law school dean or other higher-level administrator in increasing the size of the graduate program for foreign lawyers. Each of them also agreed that this seemed to be a function of declining or potentially declining J.D. enrollments, and each further agreed that it was a dynamic that was likely to continue.

Should Master of Comparative Law and related programs expand at American law schools which presently have such programs, or should they proliferate, or both, it may reasonably be anticipated that many schools, though perhaps not such lofty groves of academe as State Law School, will replicate Independent Law School's experience. That is, of necessity they will admit a larger percentage of applicants than either State Law School or Private Law School

do presently, thereby ethnically diversifying their foreign student body but also admitting an increasing number of students neither culturally nor linguistically predisposed to an understanding, appreciation, or acceptance of common law systems or their logic and language. These students will (as they presently do) experience "language"- based problems, ranging in severity from difficulty in reading to cultural alienation. To the extent that the law schools fail to recognize and appreciate the existence of these problems (as presently seems to be the case), there is created the potential for situations to arise, either in the classroom or outside of it, that may be embarrassing to the law school and its MCL program.

Recommendations

Since American law schools are neither able nor apparently inclined to provide English language training, the authors respectfully suggest that law schools with MCL or similar graduate programs engage ESL professionals to assist them.[23] Ideally, this would take the form of a summer orientation program of several weeks duration offered prior to the students' commencing the actual MCL program itself. Independent Law School does presently have a two-month summer orientation, but its emphasis is upon American law and legal process. What is recommended here is a program that would minimize legal substance and emphasize instruction in English for the specific purpose of legal study, together with some intercultural communication training. The experiences of Private Law School and State Law School indicate that an introductory course on American substantive law and the American legal system can feasibly be taught during the first semester of the regular academic year, while the foreign graduate students are concurrently enrolled in other law school classes.

The principal problem with implementing such a program would, however, be cost. Although they have not investigated it fully, the authors are informed that one American law school (Georgetown) does offer a summer program similar in some ways to that advocated here. Several of the students interviewed for this paper, however, stated that, while they had been aware of the Georgetown program, they had not attended it for financial reasons. This concern appears to be greatest among European students, who tend to be self-financed. It would appear to be less significant among students from Asian and Arab countries who tend to be sponsored by governmental agencies or multinational corporations. Those students, moreover, appear to be those most in need of such language training.

Alternatively, if cost is a major stumbling block, the law school should retain an ESL professional as a consultant to meet with the foreign students on a regular basis. The fee for such a consultant could be added to the MCL tuition but, by being spread among several students, should only marginally increase that tuition. This consultant would, then, be in a position to recognize, diagnose, and correct a student's language problems before they become acute. To do less, simply admitting the students and trusting in the TOEFL, seems not only unfair to the foreign students but also possibly unfair to the American law students who must share their classes.[24]

FOOTNOTES

1 See H.C. Black, Black's Law Dictionary: Definitions of the Terms and Phrases of American and English Jurisprudence, Ancient and Modern (5th ed.; St. Paul, MN: West Publishing Co., 1979).

2 See Alan Harding, A Social History of English Law (Baltimore, MD: Penguin Books, 1966), pp. 124, 171, 195-196, 201 & 205.

3 See, e.g., Henry Weihofen, Legal Writing Style (St. Paul, MN: West Publishing Co., 1961); Norman Brand & John O. White, Legal Writing: The Strategy of Persuasion (New York, NY: St. Martin's Press, 1976).

4 See The Harvard Law Review Association, A Uniform System of Citation (13th ed.; Cambridge, MA: 1981). In fact, for the convenience of one of the authors, a modified form of legal citation is being used for these footnotes.

5 See generally William R. Bishin & Christopher D. Stone, Law, Language, and Ethics: An Introduction to Law and Legal Method (Mineola, NY: Foundation Press: 1972).

6 Originally, the degree awarded by American law schools, a prerequisite to entry into the legal profession, was a Bachelor of Laws (LL.B.). In the Sixties, in response to student protests that three years spent in a post-graduate, professional school warranted more than another bachelor's degree, some law schools changed the title of the degree they gave to juris doctor or J.D. Perforce, virtually all other American law schools soon followed suit, thus making the law perhaps the only field of learning in which a doctoral degree is awarded before the master's.

7 See John Jay Osborne, The Paper Chase, (Boston, MA: Houghton Mifflin, 1971); see also Arthur T. Vanderbilt, II, Law School: Briefing for a Legal Education (Middlesex, England: Penguin Books, 1979).

8 The Law School Admission Test (LSAT) is a standardized, machine-scored examination, similar in some respects to the Test of English as a Foreign Language (TOEFL). With some exceptions, it is required of all applicants for admission to law schools accredited by the American Bar Association. The LSAT, which until 1982 was scored on a scale of 200 to 800, is now scored on a 10 to 48 scale, with the median (50th percentile) score being approximately 31 for the 1982-1984 period.

9 Law School Admission Council/Law School Admission Services, 1984-85 Prelaw Handbook (Newtown, PA: Law School Admission Services, 1984), p. 83.

10 Id. at p. 299.

11 Law School Admission Council/Law School Admission Services, Law Schools in Profile (Newtown, PA: Law School Admission Services, 1983), p. 34.

Footnotes, 2

[12] The first-year program in most American law schools usually consists of classes in the law of Torts, Contracts, Real Property, Civil Procedure, and Criminal Law, together with a class (variously labelled at different schools) in Legal Skills (i.e. legal research and writing). It is these first-year classes that tend to be the most Socratic, the most (apparently) abstruse, and the most intimidating. Or, as the aphorism known to anyone who has ever attended an American law school would have it: "In the first year, they scare you to death; in the second year, they work you to death; and, in the third year, they bore you to death."

[13] This is a student from the United Kingdom.

[14] This may present an interesting problem worthy of further study. It is the perception of the legally trained co-author of this paper that lawyers, as a group, tend to speak relatively rapidly. This is also true of professors of law; if anything, they tend, as a group, to speak even more rapidly. The phlegmatism of Professor Kingsfield is relatively rarely encountered. If this perception is accurate, the MCL student is presented with yet an additional barrier.

[15] In the individual case of Private Law School this is, indeed, unfortunate, in that one of its "star" professors is a Texan, born and bred, with a corresponding speech pattern. This instructor is an authority on American criminal law and criminal procedure, subjects with obvious potential for cross-national significance. Because of this professor's drawl, however, MCL students shun his classes.

[16] While this student attributed the professor's reaction to her lack of command of the English language, it should be noted that, like Hart, the protagonist in The Paper Chase, many American students feel themselves "ridiculized" in first-year law classes. The professor's reaction, thus, may simply have been standard first-year pedagogy. The discomfiture of the experience, however, is no doubt heightened when one is less than fluent in the language of instruction.

[17] In fact, State Law School does not award the Master of Comparative Law degree. Its foreign graduate students receive the Master of Law (LL.M.) degree, the standard American graduate law degree. Originally it gave the MCL degree but abandoned it in favor of the LL.M. at the urging of the foreign students themselves who, according to the program's faculty director, viewed the MCL as a "booby prize."

[18] This complaint may represent more of a cultural than a true language problem in that the foreign students, particularly the Europeans, are used to professors who lecture, whereas the Socratic method practiced in much American law school instruction does not lend itself to note-taking In the experience of one of the authors, many American students, coming from undergraduate, lecture-style classes, are also concerned about their inability to take class notes in law school. It may be of note, however, that the foreign students were not better forewarned about what to expect in a Socratic classroom.

Footnotes, 3

[19] In this regard, it is interesting to contrast the perceptions of the foreign students at State Law School with those of the MCL students at Private Law School. Both groups noted an inability to become acquainted with Americans on a close personal level. The students at Private Law School, however, ascribed this problem to their own lack of fluency, whereas the more English-proficient State Law School students attributed it to cultural factors.

[20] A significant number of State Law School's foreign graduate students have, however, previously travelled in the United States. Of the three programs surveyed, State Law School's was the only one with students who had had experience in America prior to enrolling in law school.

[21] State Law School's "problem" in this regard should be contrasted with the experience of Private Law School. According to the faculty director of the program, Private Law School has found it rare for its MCL students to stay in the United States, with an exception to be made for southern Asians, particularly Indians and Pakistanis. Some of the students at Private Law School, however, told the authors that they hoped to find employment with American firms for one or two years before returning to their own countries.

[22] Because law school grades are determined primarily, if not exclusively, on the basis of end-of-year examinations, it is not possible to say whether, as of the date of the writing of this paper, these students are or are not passing.

[23] Interestingly enough, when it was suggested to the foreign students who were interviewed for this paper that their respective programs might do more to assist them with their "language"-based problems, many of them rejected the idea. The competetive, individualist spirit of the American law school, thus, does not appear to be limited to its native students. The European students, however, were the most resistant to the idea that their law school could or should help them with additional language training. Non-Western students were more receptive to the idea.

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